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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/924,075

08/08/2001

Hoskote B. Sundaresh

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10/05/2010

SIMMONS PATENTS

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EXAMINER

LEWIS, KIM M

ART UNIT

PAPER NUMBER

3772

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DELIVERY MODE

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/924,075	<b>Applicant(s)</b> SUNDARESH, HOSKOTE B.	
	<b>Examiner</b> Kim M. Lewis	<b>Art Unit</b> 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 16-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-20, 23 and 24 is/are allowed.
- 6) ☒ Claim(s) 21 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed on 6/29/10 has been received and made of record. As requested, claims 17-20, 22 and 24 have been amended.
2. Claims 16-24 are pending in the instant application.

### ***Specification***

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "a substrate pocket" lacks antecedent basis in the original and amended specification. Support, however, is provided in the original specification for the term cavity, pouch, well, depression and hollow. Further, the specification lacks antecedent basis for "pad pocket".

### ***Allowable Subject Matter***

4. The indicated allowability of claims 21-22 is withdrawn in view of the newly discovered reference(s) to Peterman et al. Rejections based on the newly cited reference(s) follow.
5. Claim 16-20, 23 and 24 are allowed.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,533,962 ("Peterman et al.")

8. As regards claim 21, Peterman et al. discloses a ringless adhesive bandage that anticipates the bandage of the instant invention. More specifically, Peterman et al. discloses a bandage for covering a wound, said bandage comprising a substrate comprising a first adhesive substrate surface (3) and an opposing second substrate surface (opposite side), wherein said first adhesive substrate surface defines a substrate-geometric-figure; a pad (6) comprising a first pad surface and a second pad surface, wherein the distance between said first pad surface and said second pad surface define a pad-thickness (Fig. 1), and wherein said first pad surface defines a pad-geometric-figure that is smaller than the substrate-geometric-figure, and wherein said first pad surface is associated with said first adhesive substrate surface so as to define a substrate-surface-border-region around said pad; a ring (4, when portions 4a and 4b are removed) having a first ring surface and a second ring surface, wherein the distance between said first ring surface and said second ring surface defines a ring depth, and wherein said first ring surface defines a ring-geometric-figure that is smaller than the substrate-geometric-figure but larger than the pad-geometric-figure (see Fig.

Art Unit: 3772

1); and wherein said first ring surface is associated with said substrate-surface-border-region so that said ring surrounds said pad (see Fig. 1).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peterman et al.

As regards claim 22, Peterman et al. discloses the bandage for covering a wound as in claim 21, except wherein said substrate-geometric-figure is a rectangle and said ring depth is between about 2.00 mm and 2.50mm. However, it has been held that the change in shape of a prior art device is within the level of ordinary skill in the art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). It has further been held that a change in size of a prior art device is within the level of ordinary skill in the art. *In re*

Art Unit: 3772

*Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955). Thus, it would have been obvious to one having ordinary skill in the art to modify the shape of substrate such that is rectangular, as well as modify the thickness of the ring depending upon the intended use of the bandage.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-4796. The examiner can normally be reached on Monday to Wednesday, from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco, can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kim M. Lewis/  
Primary Examiner  
Art Unit 3772

Application/Control Number: 09/924,075  
Art Unit: 3772

Page 6

Kml  
September 30, 2010